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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 628

EDWARD J. KAZUBOWSKI,

Petitioner,

vs.

BETTY DOLAR KAZUBOWSKI,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

PETITION FOR REHEARING

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The petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for a writ of certiorari, entered on November 23, 1970; and (2) granting the petition, or (3) treat the petition as a motion for Declaratory Judgment. As grounds for this motion states the following:

1. To correct any jurisdictional defect by a possible oversight of the Clerk of this Court to insert *Title 28* in line 3 of page 5 of the petition so as to read Title 28 U.S.C. 1257(3), per the telephone conversation with the deputy Clerk and letter forwarded on October 28, 1970, with copy of letter showing correction of omission to all attorneys for the respondent, and prior to the date of denial of the petition by this Court.

The denial of the petition represents a refusal to decide petitioner's case in accordance with decisions rendered by this Court under like circumstances of petitioner's case, and more specifically the decisions rendered by this Court in *Hovey* v. *Elliott*, 167 U.S. 409, 413-415 (1897) and *Saunders* v. *Shaw*, 244 U.S. 317, 320 (1917). In *Hovey* v. *Elliott*, supra, this Court stated that a court possessing plenary power to punish for contempt may not, on the theory of punishing for contempt, summarily deprive a party of all right to defend the action. In *Saunders* v. *Shaw*, supra, this Court held it is a violation of due process to find petitioner liable on issues not contested in the trial court. While the instant case involves two orders of summarily finding petitioner in contempt of court, in absentia, one civil and the other a criminal contempt, and without evidence, without testimony and without jurisdiction of the person of petitioner and the subject matter under the special statute regulating divorce, this Court has denied the petition.

Lack of notice and an opportunity to be heard are the essential requirements of due process under both the State and Federal Constitutions. Petitioner can prove his claims of violation of Federal Constitutional rights on the records on appeal and review filed in the Illinois Supreme Court if afforded an opportunity.

The suppression and concealment of $50,000.00 in appeal bonds, approved as supersedeas, presents a case of first impression and has created a multiplicity of actions and appeals. The appeals presently pending in the State Courts will have the same issues presented as raised in the petition because the State Court declined and refused to make a determination of those issues presented and needed for a termination of the litigation.

The State of Illinois refuses to give full faith and credit to the records of a Circuit Court within the state and presents a case of first impression and of public importance.

The instant case is an "out-of-line" case with a decision placed on a strange footing and petitioner cannot overcome the obstacles placed in the way by the State Judiciary without a review by this Court.

The close identity of issues in petitioner's case and the numerous cases cited of the decisions rendered by this Court justifies a reconsideration of the denial of certiorari. The proceedings below lacked fundamental fairness in violation of the Fourteenth Amendment to the United States Constitution and has deprived petitioner of property and liberty without due process and equal protection of the laws, and continues to deprive this petitioner of due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

The obstacle to a fair review in petitioner's case is not by the negligence or fault of petitioner to appeal or to present his defenses of violations of Federal Constitutional rights, but the obstacle of the usurped power of the state judiciary to prevent petitioner from being heard

and from defending his property and liberty on the contested issues. The obstacle of staleness, the lack of testimony, the lack of evidence and the lack of a fair review of the proceedings in the trial court, combined with the patent inability of petitioner to take any steps to protect his property and liberty are the claims of petitioner in violation of his Federal Constitutional rights.

2. The violations of the principles of the following cases:

Hovey v. *Elliott*, 167 U.S. 409, 413-415 (1897);
Saunders v. *Shaw*, 244 U.S. 317, 320 (1917);
Cole v. *Arkansas*, 333 U.S. 196, 201 (1948);
Earle v. *McVeigh*, 91 U.S. 503, 507 (1876);
Robb v. *Connolly*, 111 U.S. 624, 637 (1884);
Brinkerhoff-Faris Co. v. *Hill*, 281 U.S. 673, 680, 682 (1930);
Armstrong v. *Manzo*, 380 U.S. 545, 549-550 (1965);
United States v. *Beebe*, 180 U.S. 343, 354 (1901).

The petition for a writ of certiorari is petitioner's access to this Court and his remedy for claims of violations of Federal Constitutional rights. The opinion rendered by the state courts cannot be reconciled with the true facts of the proceedings in the trial court and the records on appeal. Petitioner should be afforded an opportunity to have his claims of Federal Constitutional rights determined before an impartial and unbiased tribunal. This remedy is not available to petitioner in the state courts.

The suppression and concealment of the supersedeas approved and the orders entered in repeated defiance and disobedience of those supersedeas, affirmed by the Illinois Supreme Court to permit the respondent to seek recovery of money on those supersedeas upon orders en-

tered in repeated defiance thereof, defeat the benefit of the supersedeas to petitioner and the purpose for which they were ordered to be given. Otherwise, it is reasoning in circles.

This Court has the power to correct the unconscionable, inconsistent and wrong opinion rendered by the Illinois Supreme Court: *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126. In *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697, 703, this Court stated:

> "Where a state court fails to pass on evidence or make findings of fact because under their respective views the facts referred to are immaterial, we are not relieved from the duty of examining the evidence for the purpose of determining what facts reasonably might be and presumably would be found therefrom by the state court."

In *Davis* v. *Wechsler*, 263 U.S. 22, 24 (1923) this Court stated:

> "Whatever springes the state may set for those who are endeavoring to assert rights that the state confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

The denial of the petition leaves petitioner's claims of violations of Federal Constitutional rights undetermined and leaves petitioner without a remedy for the enforcement of those rights.

Justice is equal for all or it is not justice.

The combination of the circumstances presented in the petition is so grossly violative of the principles of the decisions rendered by this Court, so as to call for a revaluation of the denial of certiorari and to permit peti-

tioner's claims of violations of his Federal Constitutional rights to be appraised on the basis of the true proceedings in the trial court and on the records on appeal and review before the state Supreme Court.

To close the doors to petitioner is to deny him the only opportunity to prove his claims of violations of Federal Constitutional rights, and to render the Constitutional guarantees of the Fourteenth Amendment of the United States Constitution purely theoretical, and to award the respondent a "one-way ticket" to continue to confiscate petitioner's property and liberty at her whim, and to create multiplicity of actions and appeals.

Orders of commitments for imprisonment of petitioner, based upon non-existent orders, without an opportunity to be heard and to defend, should shock the conscience of this Court. The State Supreme Court should not be permitted to violate Article VI, Clause 2 (the "Supremacy Clause") to defeat the Constitutional guarantees afforded a litigant in an adversary proceeding.

3. There is an actual controversy before this Court raising serious constitutional questions which can and should be decided now. If the orders entered in violation of the special statute regulating divorce and entered in defiance of the supersedeas are invalid, petitioner is entitled to a declaratory judgment.

If this Court should conclude that the petition is unavailable to petitioner, the case is not ended. The petition should be treated as a motion for declaratory judgment, and the court below should be directed to entertain this motion and rule now upon the constitutional allegations.

The Federal Declaratory Judgment Act, 28 U.S.C.A. Section 2201 provides:

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

The Declaratory Judgment Act cannot, of course, be used to circumvent the constitutional requirement of a "case or controversy." *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227 (1937). The cases at bar present archetypal examples of fully justiciable controversies where the grant of declaratory relief can forestall inevitable prejudice to one party or the other.

The essence of a "case or controversy" within the meaning of Article III of the United States Constitution is a proceeding (1) involving an actual dispute over legal relations, (2) between parties of clear adverse interest, which (3) is presented in sufficiently concrete form that courts may appropriately determine the relief to which the parties are entitled. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240-41 (1937).

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for writ of certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order and grant the petition and review the opinions below.

Respectfully submitted,

EDWARD J. KAZUBOWSKI
133 E. Division Street
Kewanee, Illinois 61443
Petitioner, Pro Se

State Of Illinois
County Of Henry—ss.

Edward J. Kazubowski being first duly sworn on oath deposes and says that he is the petitioner in the above entitled case and that this petition is made in good faith and not for delay.

Affiant further says that he submits forty copies of this petition, one of which bears the manuscript signature of petitioner.

Affiant further says that proof of service upon all parties required to be served is made upon separate instrument.

/s/ Edward J. Kazubowski

Subscribed and sworn to before me
this 3rd day of December, 1970.

/s/ Louise M. Ouart
Notary Public

(Seal)

My Comm. Expires February 26, 1974